

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.11.2016

CORAM

The Hon'ble Mr.Justice K.K.Sasidharan

C.R.P.(PD)No.2451 of 2016

and

C.M.P.No.12704 of 2016

1. Senthamarai

2. Balasubramanian

...Petitioners

Vs.

Gowri

... Respondent

Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order, dated 25.02.2016, made in I.A.No.606 of 2015, in O.S.No.132 of 2010, passed by the learned Subordinate Judge, Cheyyar, Thiruvannamalai District.

For Petitioners : Mr.V.Meenakshisundaram

For Respondent : Mr.K.Balamurali
for M/s. Shivakumar and Suresh

ORDER

The petitioners filed an Interlocutory Application before the Subordinate Court, Cheyyar, in I.A.No.606 of 2015, to include one item of property, to be included as an item to be partitioned along with other properties.

2. The Application was dismissed by the trial Court on the ground that the petitioners have not produced *prima facie* materials to satisfy that the left out properties are also liable to be partitioned. The said Order is under challenge in this Civil Revision Petition.

3. The learned counsel for the petitioners contended that, even in the written statement filed originally, the petitioners have taken up a contention that the Suit property was purchased by their father in the name of the respondent, and as such, the said property also should be included as an item of property to be partitioned along with other properties. According to the learned counsel, the trial Court failed to frame an issue with regard to partial partition, and the same necessitated the petitioners to file the Application in I.A.No.606 of 2015.

4. The learned counsel for the respondent submitted that, after completing the cross-examination of P.W.1, the petitioners filed the Application in I.A.No.606 of 2015, without any material, and as such, the trial Court was perfectly right in dismissing the application.

5. There is no dispute that the petitioners, in the written statement filed earlier, took up a contention that their father purchased certain properties in the name of the respondent. The petitioners have, therefore, taken up a contention with regard to partial partition. The trial Court appears to have not framed any issue with regard to partial partition. The petitioners cross-examined P.W.1, with respect to the property, which is sought to be included, as per the Application in I.A.No.606 of 2015. The respondent stated that the said property was purchased with the income provided by her husband. Thereafter, the petitioners filed the Application in I.A.No.606 of 2015.

6. The petitioners have not produced *prima facie* materials before the trial Court to include the property, as shown in I.A.No.606 of 2015, as one, available for partition. Such being the factual position, the trial Court

was right in dismissing the Application. Eventhough, a plea was taken by the petitioners in the written statement with regard to partial partition, the fact remains that the trial Court has not framed any issue with regard to partial partition.

7. The learned trial Judge is directed to frame an issue with respect to partial partition and permit the parties to prove the said contention one way or the other.

8. The Civil Revision Petition is disposed of with the above direction.
No costs. Consequently, connected Miscellaneous Petition is closed.

21.11.2016

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Index : Yes/No

Internet ; Yes/No

To

The Subordinate Judge,
Cheyyar, Thiruvannamalai District.

K.K.Sasidharan,J.,

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